

Panaji, 26th December, 2019 (Pausa 5, 1941)

SERIES II No. 39

OFFICIAL GAZETTE

GOVERNMENT OF GOA



PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Corrigendum

No. 8/86/2019-20/D.Aagri/1287

Read: 1) Order No. 8/86/2019-20/D.Aagri/724 dated 23-08-2019.

In the above referred order the following may be corrected:

- 1) In the second para the sentence may be read as "The appointment is on regular basis" instead of "The appointment is on officiating basis".
- 2) In the table the Budget Head of Sr. No. 2 Shri Deepak Gopinath Gadekar (OBC) may be read as "2401-00-001-03(NP)-01" instead of "2401-00-109-05(NP)-01".

This supersedes corrigendum No. 8/86/2019-20/D.Aagri/927 dated 14-10-2018.

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 23rd December, 2019.



Department of Co-operation

Office of the Registrar of Co-operative Societies

Order

No. 8-1/FISH/TS-II/SZ/2017/RCS/4343

Read: 1) Show Cause Notice No. 17-242-2006/ARSZ/FISHERIES/212 dated 21-04-2017.

- 2) This office Order No. 8/1/FISH/TS-II/SZ/2017/RCS/668 dated 19-05-2017 appointing a Committee of Administrator in terms of

Section 67A(1) of the Goa Co-operative Societies Act, 2001 to streamline the affairs of the South Goa Mechanized Boat Owners Co-op. & Marketing Society Ltd., Cutband, Velim, Salcete-Goa.

- 3) Letter No. SGMBOCMSL/COA/13 dated 20-11-2017 received from Chairman of Committee of Administrator of the South Goa Mechanized Boat Owners Co-op. & Marketing Society Ltd., Cutband, Velim, Salcete-Goa.
- 4) This office Order No. 8/1/FISH/TS-II/SZ/2017/RCS/3829 dated 29-12-2017 extending the term of Committee of Administrator.
- 5) This office Order No. 8/1/FISH/TS-II/SZ/2017/RCS dated 04-06-2018 extending the term of Committee of Administrator.
- 6) This office Order No. 8/1/FISH/TS-II/SZ/2017/RCS/3708 dated 24-12-2018 extending the term of Committee of Administrator.
- 7) This office Order No. 8/1/FISH/TS-II/SZ/2017/RCS/2290 dated 16-07-2019 extending the term of Committee of Administrator.

In exercise of powers vested in me under Section 67A(1) of the Goa Co-operative Societies Act, 2001, I, Menino D'Souza, Registrar of Co-operative Societies, Government of Goa, hereby extend the term of Committee of Administrators appointed vide Order referred at Sr. No. 2 hereinabove for another period of 3 (three) months with effect from 23-11-2019 or till constitution of full fledged Board of Directors with due process of law, whichever is earlier.

Menino D'Souza, Registrar & ex officio Joint Secretary (Co-op. Societies).

Panaji, 13th November, 2019.

Department of Labour

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Order

No. 28/36/2019-LAB/832

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between M/s. Kadamba Transport Corporation Limited, Paraise-de-Goa, near Tin Building, Porvorim, Goa, and its workmen, Shri Martin Afonso and others, represented by the Kadamba Kamgar Union, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7A of the said Act.

SCHEDULE

"(1) Whether the action of M/s. Kadamba Transport Corporation Limited, Paraise-de-Goa, near Tin Building, Porvorim, Goa, in non-implementing the IInd financial up-gradation under the Modified Assured Career Progression Scheme (MACP) and other consequential benefits to its workmen, Shri Martin Afonso, Shri Raju B. Tuenkar, Shri Prabhakar J. Tilve, Shri Santosh N. Naik and Shri Uttam D. Naik, is legal and justified?

(2) If not, to what relief the workmen are entitled?"

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 16th December, 2019.

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Order

No. 28/4/2019-LAB/833

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Agrawal Renewable Energy Private Limited, Anand Bhavan, Old Station Road, Margao, Goa and their workman, Shri Vinod Gajanan Naik, Store Assistant, represented by the Goa Trade and Commercial Workers' Union, in

respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7A of the said Act.

SCHEDULE

"(1) Whether the severance of employer-employee relationship between the management of M/s. Agrawal Renewable Energy Private Limited, Anand Bhavan, Old Station Road, Margao, Goa, and Shri Vinod Gajanan Naik, Store Assistant on account of refusal of employment or otherwise, with effect from 08-04-2016, is legal and justified?

(2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 16th December, 2019.

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Notification

No. 28/2/2019-LAB/823

The following award passed by the Labour Court-II, at Panaji-Goa on 06-11-2019 in Case No. Ref. LC-II/IT/16/10 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 11th December, 2019.

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IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/16/10

Shri Lavu Shirodkar,
H. No. 541, Mandur, Dongrim,
Fornawada,
Post, Netura, Goa. ... Workman/Party-I
V/s

M/s Garware Goa Nets Ltd.,
Corlim Industrial Estate,
Corlim-Goa. ... Employer/Party-II

Workman/Party-I represented by Adv. Shri A. V. Nigalye.

Employer/Party-II represented by Adv. Shri P. Chawdikar.

Panaji, Dated: 06-11-2019

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 27-07-2010, bearing No. 28/25/2010-LAB referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present dispute to this Labour Court-II vide his order dated 08-09-2010.

"(1) Whether the action of the management of M/s Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa in refusing employment to Shri Lavu Shirodkar, Senior Operator, with effect from 17-11-2002, is legal and justified?"

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/16/10 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 28-01-2011 at Exb-4. The facts of the case in brief as pleaded by the Workman are that the Employer/Party II (for short, 'Employer') is company incorporated under the Companies Act, 1956 having its registered office and factory at Corlim Industrial Estate, Corlim, Goa. He stated that he was initially appointed as 'Asst. Operator' and subsequently promoted as 'Sr. Operator'. He stated that he has put in a long and meritorious service of over twelve years with the Employer.

3. He stated that by charge-sheet dated 10-07-2002, the Employer alleged false and frivolous charges of misconduct against him. He stated that it was alleged that he deliberately remained absent on the dates mentioned therein. He stated that by the said charge-sheet, he was informed that it has been decided to hold an enquiry against him in respect of the said charges. He stated that it was also alleged that the enquiry will be conducted by Mr. K. Parmeshwaran at Mumbai on 24-07-2002 at 2:30 p.m. He submitted that the Employer decided to hold enquiry against him and appointed an Enquiry Officer, without even seeking explanation from him. He stated that since the registered office of the Employer and its factory is located at Corlim Industrial Estate, Corlim, Goa, the Employer could have conveniently held the enquiry in its factory or office premises or at any other place in Goa. He stated that he had requested the Employer to hold the enquiry in Goa. He stated that however he did not receive any favourable reply from the Employer. He stated that he could not travel to the distant place at Mumbai due to poverty and paucity of funds. He stated that he also could not arrange for assistance in the enquiry. He stated that the Enquiry Officer, who was the appointee of the Employer, conducted the enquiry ex-parte in his absence. He stated that thereafter the Enquiry Officer submitted his findings dated 03-09-2002, holding that the charges alleged in the charge-sheet are proved. He stated that thereafter, by letter dated 17-11-2002, the Employer dismissed him with immediate effect. He submitted that after termination of his service, he raised an industrial dispute with the Employer, demanding reinstatement in service with full back wages. He stated that he also sought intervention of the Labour Commissioner, Government of Goa, which ended in failure.

4. The Workman contended that the action of the Employer in dismissing him from service is not only illegal and unjustified, but also malafide and done with ulterior motive. He submitted that his services have been terminated by the Employer without any reasonable cause and for no misconduct committed by him. He submitted that the charge-sheet dated 10-07-2002 is illegal and the misconduct alleged in the said charge-sheet is false and fictitious. He submitted that the action of the Employer of appointing an Enquiry Officer without even seeking an explanation from him, fixing the date of enquiry and continuing with enquiry without any reply to the charge-sheet from him discloses the malafides of the Employer. He submitted that the said action further shows that

the subsequent action of the Employer were premeditated and the Employer had decided to terminate his services, even before holding the enquiry. He submitted that the action of the Employer of holding the enquiry at Mumbai, instead of holding in Goa, where the Employer has its factory as well as its office, is illegal. He submitted that the Employer was well aware that he, due to his poverty, would not be able to travel to Mumbai and participate in the enquiry and it was for this reason that it held the enquiry in Mumbai. He submitted that the further action of the Employer of continuing to hold the enquiry at Mumbai inspite of his request to hold it in Goa further exhibits the evil designs and the malafide intentions of the Employer. He submitted that by holding the enquiry in Mumbai, the Employer effectively denied the right of defence to him. He submitted that the action of the Employer is in total breach of the principles of natural justice and fair play. He submitted that the Enquiry Officer, who conducted the enquiry against him, was biased in favour of the Employer and against him. He submitted that the findings recorded by the Enquiry Officer, whereby he held that the charges of misconduct alleged against him are proved, are illegal and deserves to be set aside. He submitted that assuming that the enquiry held against him and the findings of the Enquiry Officer are just and legal, in that event the punishment of dismissal awarded to him is extremely harsh and severe and not proportionate to the offence. He therefore submitted that the order of dismissal dated 17-11-2002 is therefore liable to be set aside. The Workman therefore prayed for an Award holding that the action of the Employer in refusing employment to him w.e.f. 17-11-2002 is illegal and unjustified and the Employer be directed to reinstate him in service with continuity of service and with all benefits and privileges attached to his post.

5. The Employer disputed the claim of the Workman by filing its Written Statement on 07-06-2011 at Exhibit-7. The Employer, as and by way of preliminary objection, submitted that the reference is null and void as there does not exist an "Industrial Dispute" as defined u/s 2(k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa without any material on record and without application of mind. The Employer admitted that the Workman was employed with them as 'Sr. Operator'. The Employer stated that the attendance record of the Workman is fraught with absenteeism. The Employer stated that the Workman was issued a charge-sheet dated

10-07-2002. The Employer stated that the Workman was informed that they have decided to hold an enquiry against him in respect of the said charges. The Employer stated that it was also informed to the Workman that the enquiry will be conducted at Mumbai. The Employer admitted that the Workman requested them to hold the enquiry in Goa, however denied that he did not receive any favourable reply from them as alleged. The Employer stated that the Workman was informed that it is not obligatory on their part to arrange the enquiry in Goa. The Employer stated that the Workman was informed in the charge-sheet itself issued to him that he will be reimbursed to and from second class railway fare from Goa to the venue of the enquiry as per his grade on the scheduled date of enquiry. The Employer stated that the Workman never showed any interest in performing his duties entrusted to him by his superiors and he used to always remain absent from his duties.

6. The Employer stated that an independent Enquiry Officer Mr. K. Parmeshwaran was appointed as Enquiry Officer to conduct the enquiry with respect to the said charge-sheet. The Employer stated that the Enquiry Officer conducted the enquiry in a fair, proper and impartial manner. The Employer submitted that every opportunity was given to the Workman to defend the charges leveled against him. The Employer submitted that the Workman has however failed to avail the said opportunities. The Employer submitted that the Enquiry Officer conducted the enquiry ex-parte in the absence of the Workman after giving him sufficient opportunities. The Employer stated that the Enquiry Officer submitted his findings dated 03-09-2002 and after appreciating the facts of the case, held the Workman guilty of the charges leveled against him by the Employer.

7. The Employer submitted that they considered the proceedings of the enquiry; the findings of the Enquiry Officer dated 03-09-2002 and concurred with the same. The Employer stated that they considered the past record of the Workman. The Employer stated that they did not find any extenuating circumstances. The Employer stated that considering the gravity of the proved misconduct, they decided to dismiss the Workman from the service. The Employer stated that the Workman was accordingly served with a dismissal letter dated 21-09-2002 dismissing him from service.

8. The Employer admitted that after termination of the services of the Workman, he raised an Industrial dispute with them demanding reinstatement in service with full back wages. The

Employer also admitted that the Workman also sought the intervention of the Labour Commissioner, Government of Goa. The Employer admitted that the conciliation officer appointed u/s 4 of the I.D Act, 1947 held conciliation proceedings in the matter. The Employer admitted that the said proceedings ended in failure. The Employer submitted that the ground mentioned in para 10 (a) to (k) of the Claim statement are false and cannot be considered under the facts and circumstances of the present matter. The Employer submitted that the punishment of dismissal awarded to the Workman is just and proportionate, considering the proved misconduct and past record of the Workman. The Employer submitted that its action in dismissing the Workman from service is legal, just and proper and therefore the Workman is not entitled to any relief as claimed.

9. The Employer stated that the Workman is gainfully employed from the date of dismissal till date and as such no hardship is caused to the Workman. The Employer submitted that the Workman has accepted his gratuity by duly signing the settlement before the Labour Commissioner. The Employer submitted that the Workman never showed his insistence for his reinstatement during the said proceedings and in fact has willingly accepted the gratuity payment. The Employer submitted that reinstatement is nothing but a mere afterthought with malafide intention, especially since after settlement before the Labour Commissioner, the Workman has accepted gratuity as a full and final settlement of his dues.

10. The Employer submitted that in the event, this Hon'ble Court set aside the enquiry on any of the ground they may be permitted to lead a fresh evidence before this court to prove the charges. The Employer stated that in view of escalating and continuing losses, they closed the manufacturing operations of their unit located at plot No. 2, Corlim Industrial Estate on 16-06-2012 by informing G.I.D.C., Patto, Panaji-Goa, vide their letter dated 10-07-2012. The Employer stated that in view of closure, they have withdrawn their application for registration with Director of Industries, Trade and Commerce and as such there will be no registration certificate. The Employer stated that vide memorandum of settlement dated 14-06-2012 in the office of Commissioner of Labour retrenched all their sixty-three workmen on their roll. The Employer therefore prayed for dismissal of the present reference issued by the Government of Goa. The Employer denied the overall case of the Workman as pleaded in his statement of claim and prayed for dismissal of the present reference issued by the Government of Goa.

11. Thereafter, the Workman filed his Re-joinder on 12-07-2011 at Exb.-8. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement which are contrary to the statements and averments made by him.

12. Based on the pleadings filed by the respective Parties in the present proceedings, this Hon'ble Court framed certain issues on 09-08-2011 at Exhibit-9. Among the said issues, the following Issue No. 1 and 2 were treated as Preliminary Issues.

1. Whether a fair and proper enquiry was conducted against the Workman/Party-I?
2. Whether the charges of misconduct leveled against the Workman/Party I vide charge-sheet dated 10-07-2002 are proved to the satisfaction of this Court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in refusing employment to him w.e.f. 17-11-2002 is illegal and unjustified?
4. Whether the Employer/Party II proves that the present order of reference is null and void in view of the preliminary objections raised by them in para (i) and (ii) of their written statement?
5. Whether the Workman/Party I is entitled to any relief?
6. What Order? What Award?

13. My answers to the aforesaid issues are as under:

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|---------------------|-----------------------|
| (a) Issue No. 1 | : In the Negative. |
| (b) Issue No. 2 | : In the Negative. |
| (c) Issue No. 3 | : In the Affirmative. |
| (d) Issue No. 4 | : In the Negative. |
| (e) Issue No. 5 & 6 | : As per final order. |

I have heard the oral arguments of Ld. Adv. Shri A. V. Nigalye, appearing for the Workman as well as Ld. Adv. Shri P. Chawdikar, appearing for the Employer.

14. Ld. Adv. Shri A.V. Nigalye, appearing for the Workman, during the course of his oral arguments, submitted that the Workman was employed with the Employer as 'Senior Operator'. He submitted that the Workman was initially appointed as 'Asstt. Operator' and subsequently promoted as 'Senior Operator'. He submitted that vide order dated

26-02-2014 passed by this Hon'ble Court in its findings on preliminary issue No. 1 and 2 held that no fair and proper enquiry has been conducted against the workman in respect of the charge-sheet dated 10-07-2002 and therefore the enquiry conducted against the workman is quashed and set aside. He submitted that the Employer led its evidence before this Hon'ble Court by examining two witnesses, namely, Shri Anant G. Devlekar and Shri Ashok Patwardhan to prove the charges of misconduct levelled against the workman, vide charge-sheet dated 10-07-2002. He submitted that the oral evidence adduced by the Employer through its aforesaid witnesses is contrary to the documentary evidence on record. He submitted that the witness of the Employer, Shri Ashok Patwardhan indicates that he was not having any authority to depose in the present matter and that as an Accounts Officer of the Employer his duties were related to the accounts of the Employer Company. He submitted that both the said witnesses admitted that the Employer used to make late payment quiet often to the workers in the year 2001 and 2002 and that the said delayed payment used to go for 25 days. He submitted that both the said witnesses admitted that the workers used to face financial difficulties due to delay in making payments to them. He submitted that the second witness of the Employer deposed that he do not know as to who was maintaining the attendance record in the year 2001 and 2002 in the Employer Company and that he is unable to tell as to who was supervising the said person maintaining the attendance record during the said period. He submitted that the second witness of the Employer admitted that the said absence of leave of the workman were condoned by his superiors from time to time. He submitted that the second witness of the Employer deposed that at present he do not possess any record in writing in support of his statement made in para 7 of his affidavit in evidence, wherein the workman have been shown as absent from November, 2001 till April, 2002 for a total period of 71.5 days. He therefore submitted that the Employer has failed to prove the charges of misconduct as stated in the charge-sheet dated 10-07-2002 issued to him. He submitted that the termination of services of the Workman by the Employer w.e.f. 17-11-2002 is illegal and unjustified. He submitted that without prejudice to his aforesaid contention, the punishment of dismissal from service issued to the Workman is too severe and disproportionate to the proved misconduct. He submitted that after termination of services of the workman, he has

been unemployed. He submitted that the workman has made efforts to secure gainful employment, however, he could not succeed. He submitted that the Employer has closed its factory w.e.f. 16-06-2012. He therefore submitted that he is entitled for full back wages.

15. Per contra, Ld. Adv. Shri P. Chawdikar, representing the Employer, during the course of his oral arguments, submitted that by order dated 26-02-2014, passed on the findings on the preliminary issue No. 1 and 2, this Hon'ble Court quashed and set aside the enquiry held against the Workman in respect of charge-sheet dated 10-07-2002 being unfair and improper. He submitted that the Employer therefore led independent evidence oral as well as documentary by examining two witnesses, namely, Shri Anant G. Devlekar and Shri Ashok Patwardhan. He submitted that the oral as well as documentary evidence led by the Employer through its aforesaid witnesses proved the charges of misconduct levelled against the workman, vide charge-sheet dated 10-07-2002. He submitted that the said oral as well as documentary evidence on record clearly indicates that the Workman had remained absent unauthorizedly for 71.5 days for the period from September, 2001 till April, 2002 as spelt out in the charge-sheet issued to him. He submitted that the said evidence on record clearly proves the misconduct of habitual absence without leave etc. as spelt out in the charge-sheet. He therefore submitted that the refusal of employment to the Workman is just, fair and legal and the Workman is therefore not entitled to any relief. He submitted that punishment of dismissal is proportionate to the proved misconduct. Without prejudice to his aforesaid submission, he submitted that the Employer has produced on record oral as well as documentary evidence pertaining to the closure of its factory w.e.f. 16-06-2012. He submitted that the Employer also produced on record a memorandum of settlement dated 14-06-2012 signed with its employees union and a compact disc showing the gainful employment of the Workman.

I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by Ld. Adv. Shri P. Chawdikar appearing for the Employer.

16. *Issue No. 1 and 2:*

Vide order dated 26-02-2014, passed in my finding on the preliminary issue No. 1 and 2, I have come to the conclusion and held that no fair and proper enquiry has been conducted against the Workman in respect of the charge-sheet dated 10-07-2002 and that the enquiry conducted against the Workman is quashed and set aside.

17. *Issue No. 3:*

As the enquiry was quashed and set aside, the Employer chose to lead independent evidence on the floor of this court by examining two witnesses to prove the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002, issued to the Workman.

The first witness of the Workman, Shri Anant G. Devlekar in his affidavit in evidence on record, deposed that he is working with the Employer as Administrative Manager, handling day to day working of administrative department such as salary, leave records, attendance etc. of workmen of the Employer Company. The said witness in para 9 of his affidavit-in-evidence deposed that the Workman remained absent from September, 2001 to April, 2002 for total 71.5 days (being September, 2001- 08 days, November, 2001-15. 5 days, December, 2001-15.5 days, February, 2002-06 days, March, 2002-12.5 days and April, 2002-14 days) and also produced on record copies of extract of muster roll for the period starting from September, 2001 to April, 2002 (Exb. 22-colly). He deposed that inspite of repeated warnings, caution etc., the Workman did not improve in his attendance and deliberately remained absent from work. He deposed that the Workman frequently remained absent unauthorizedly without any satisfactory explanation and without any proper justification. He deposed that due to such acts on behalf of the workman, the Employer had suffered production loss.

18. He was cross-examined by Ld. Adv. Shri A. V. Nigalye, appearing for the Workman. In his cross-examination, Shri Devlekar admitted that in his earlier affidavit-in-evidence filed in the present proceedings, he deposed that he is presently designated as consultant. He deposed that in the present affidavit in evidence, he deposed that he was working with the Employer as Administrative Manager. The witness further deposed that he was Administrative Manager prior to the year 2013. The witness finally admitted that presently, he is not working as Administrative Manager with the Employer Company and that his statement made in para 1 of his affidavit in evidence is incorrect statement. He admitted that in the year 2001, he was not posted in any of the branch of the Employer in Goa and that one Mr. Desai was posted at Goa branch of the Employer as its Manager in the year 2001 and 2002, however, he do not remember his first name. He deposed that he do not remember the name of the person as well as his designation, who was entrusted with the work of maintaining the muster roll in the year 2001 and 2002 by the

Employer at its Corlim branch. He deposed that he do not identify the hand-writing appearing on the muster roll at Exb.22-colly. He deposed that apart from the muster roll, the Employer do not have any other records pertaining to the attendance of the Workman. He deposed that he do not recollect as to whether the Employer used to obtain the signature of its workers or maintaining punching card system to mark the attendance of its workers. He admitted that the contents of para 9 of his affidavit in evidence do not match with the muster roll at Exb. 22-colly. He deposed that the aforesaid mistake has been made by the clerk appointed by the Employer, however, he do not know his name. He deposed that at the time of preparing the charge-sheet, he had not seen the muster roll maintained by the Employer, wherein the attendance of the Workman has been marked. He deposed that he do not remember as to who had prepared the said charge-sheet against the Workman. He admitted that in his earlier cross-examination, in the present matter, he has deposed that sometimes the Workman used to remain absent on medical grounds and subsequently, he used to submit the medical certificate. He admitted that there was delay in payment of wages to the workers of the Employer at the relevant time i.e. from September, 2001 to April, 2002. He deposed that the Workman used to travel from his native place at Mandur, Dongrim, Tiswadi, Goa to the factory of the Employer to report for his duties, which is around 15 kms. away from the factory of the Employer. He deposed that he do not know as to whether due to delay in payment of wages of the Workman, he used to find difficult to travel by bus from his place of residence to the factory of the Employer. He admitted that because of delay in payment of wages of the workers, there was consequential delay in payment of ESI contribution of the workers. He deposed that he do not know as to whether because of unavailability of ESI facility, the Workman was compelled to approach the private doctor for medical treatment of himself as well as of his family members at the relevant time. He deposed that delay in payment of wages affected the attendance of the Workman. He deposed that he is not aware as to whether whenever the Workman used to remain absent, he used to intimate to the management of the Employer about his absenteeism either by telephonically or otherwise. He deposed that he do not know as to whether the Workman used to remain absent hardly for one or two days in a month and that contents of para 9 of his affidavit in evidence is false.

Thus, the aforesaid oral as well as documentary evidence led by the Employer through its witness Shri Anant Devlekar is full of contradictions. The testimony of the said first witness of the Employer Shri Devlekar has been shaken and as such could not be believed.

19. The second witness of the Employer, namely, Shri Ashok Patwardhan filed his affidavit in evidence and also produced on record certain documents. The said affidavit in evidence of the Employer's witness, Shri Ashok Patwardhan namely two compact discs (Exb. 40), copy of letter of the Employer dated 10-07-2012 (Exb. 41) and copy of memorandum of settlement dated 14-06-2012 (Exb. 42). The contents of affidavit-in-evidence of both the witnesses of the Employer are more or less same. More so ever, Shri Patwardhan, in para 6 of his affidavit in evidence deposed that 71.5 days of unauthorized absence of the Workman, similar to the deposition of para 9 of the first witness of the Employer Shri Devlekar. The said para 6 of affidavit in evidence of the said witness of the Employer do not match with the copies of extract of muster roll on record at Exb. 22-colly and as such differs from each other. Hence, I am not inclined to give any weightage to the said oral evidence of Shri Ashok Patwardhan.

20. On the contrary, the evidence on record indicates that the Workman was in the employment of the Employer for over 12 years till he was dismissed from service w.e.f. 17-11-2002. The Workman was initially appointed as Asstt. Operator and subsequently promoted as 'Senior Operator'. The Employer also failed to produce on record any memo, show-cause notices, warning letters, charge-sheets etc. issued to the Workman in the past in his long term service with them. The second witness of the Employer Shri Patwardhan admitted that at the relevant time, there was delay in payment of wages to the workers. The said witness of the Employer also admitted that the Workman used to remain absent on medical ground and subsequently, he used to submit the medical certificate. In view of above, it is held that the Employer also failed to prove any of the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002, issued to the Workman, either by holding a fair and proper enquiry in accordance with principles of natural justice or also on the floor of this court. In the absence of any proved misconduct on the part of the Workman, it is held that the action of the Employer in refusing employment to the Workman w.e.f. 17-11-2002 is illegal and unjustified. The issue No. 3 is therefore answered in the affirmative.

21. Issue No. 4:

The Employer, as and by way of its preliminary objections, filed in the written statement, submitted that the reference is null and void as there is no industrial dispute exists as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa, without any material on record, in haste and without application of mind. The burden to prove the aforesaid issue is therefore on the Employer. The Employer has however, failed to bring on record any material evidence in support of the aforesaid issue. Even otherwise, in the case in hand, it is not in dispute that the Party I is a 'workman' within the meaning of Section 2(s) of the I.D. Act, 1947. It is also not in dispute that the Party II Company is an 'Employer' within the meaning of Section 2(j) of the I.D. Act, 1947. Hence, the present dispute raised by the workman against the Employer pertaining to his non-employment is an 'industrial dispute' within the meaning of Section 2(k) of the I.D. Act, 1947 and as such this court has every jurisdiction to adjudicate the present reference. Consequently, the Employer failed to prove its allegations that the reference is bad-in-law for any reasons as there is no industrial dispute exists as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa without any material on record, in haste and without application of mind. The issue No. 4 is therefore answered in the negative.

22. Issue No. 5:

While deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the action of the Employer in refusing employment to the Workman w.e.f. 17-11-2002 is illegal and unjustified. The evidence on record indicates that the Workman was initially appointed as Asstt. Operator and subsequently promoted as Senior Operator. The evidence on record indicates that the Employer has permanently closed its Corlim unit w.e.f. 16-06-2012 due to unavoidable and unforeseen circumstances and withdrawn its application for registration with the Director of Industries, Trade and Commerce, vide its letter dated 10-07-2012 (Exb.41). The Workman is therefore not entitled for any reinstatement in the service of the Employer.

23. In the case of **Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Ors., reported in (2013) 10 SCC 324**, the Hon'ble Apex Court has held that if the order of

termination is void ab initio, the Workman is entitled to full back wages. The relevant para of the decision is extracted hereunder:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

24. The principle laid down by the Hon'ble Apex Court is well recognized and is also applicable to the case in hand. In the case in hand, the Workman was in the employment of the Employer for over 12 years till he was illegally dismissed from service w.e.f. 17-11-2002. The driving license issued by the Directorate of Transport at Exb.45-cross indicates that his date of birth is 30-06-1961. This implies that his age on the date of dismissal i.e. on 17-11-2002 was over 41 years. The Workman

pleaded and also stated on oath that he is unemployed from the date of his termination till date and that he has made efforts to secure gainful employment. However, he has not been successful because he was dismissed employee. He deposed that his family owns an Innova car bearing registration No. GA-07-F-2592, which was purchased by his family as tourist taxi in his name.

25. In his cross-examination, the Workman deposed that his educational qualification is standard Xth failed in English medium. He deposed that his family purchased the said Innova car in the year 2012 for an amount of Rs. 11,50,000/- by obtaining a loan of Rs. 9,00,000/- and that they were paying loan instalment of Rs. 17,500/- p.m. He deposed that on an average his gross income was Rs. 15000/- to Rs. 20,000/- per month from hiring the said vehicle. He deposed that he is married person having one daughter of 15 years old, studying in IXth standard. He deposed that his wife is house wife and that he spent around Rs. 2000/- to Rs. 3000/- on household expenses. The compact disc produced by the Employer on record at Exb. 40, is not supported by a certificate of a responsible official. There is no corroborative evidence to support the compact disc. Taking into consideration the relevant factors, a lump sum amount of Rs. 3,00,000/- (Rupees three lakhs only) be paid to the workman, in order to meet the ends of justice.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of M/s Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa in refusing employment to Shri Lavu Shirodkar, Operator with effect from 17-11-2002, is illegal and unjustified.
2. The Employer, M/s. Garware Goa Nets Limited, Corlim, Industrial Estate, Corlim, Goa is hereby directed to pay to the Workman, Shri Lavu Shirodkara sum of Rs. 3,00,000/- (Rupees Three lakhs only) within a period of two months from the date of passing the present order.
3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2019-LAB/824

The following award passed by the Labour Court-II, at Panaji-Goa on 18-11-2019 in Case No. Ref. IT/18/2010 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 11th December, 2019.

LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. IT/18/2010

Shri Vishnu Gawade,
Rep. by the Secretary,
Goa Trade and Commercial
Workers Union,
Velho Bldg., Panaji-Goa. ... Workman/Party I
V/s

M/s. G.K.B. Vision Ltd.,
Plot No. 27 and 28,
Pilerne Industrial Estate,
Pilerne, Bardez-Goa. ... Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri A.V. Nigalye.

Panaji, Dated: 18-11-2019.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 10-05-2010, bearing No. 28-15-2010-LAB, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Government of Goa, vide its another order dated 09-02-2016, transferred the present dispute to this Labour Court-II, Panaji, Goa.

"(1) Whether the action of the management of M/s. GKB Vision Limited, Pilerne Industrial Estate, Pilerne, Bardez, Goa, in dismissing the service of its Workman, Shri Vishnu Gawade, with effect from 24-12-2008, is legal and justified?"

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/18/10 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his statement of claim on 17-09-2010 at Exb-3. The facts of the case in brief as pleaded by the Workman are that he was employed in the workshop dept. as 'Lathe Operator' by the Employer/Party II (for short, 'Employer'). He stated that he was issued a charge-sheet dated 27-08-2007 alleging certain acts of misconducts. He stated that he filed his reply to the said charge-sheet denying each and every allegations.

3. He stated that however, the Employer went ahead to conduct the enquiry against him. He stated that an enquiry was setup against him by the Employer by appointing Adv. Shri A.M. Gaikwad as an Enquiry Officer to investigate into the acts of misconduct. He stated that he was represented by an office bearer of the union. On the contrary, the management was represented by Adv. A. Nigalye. He stated that after conclusion of the enquiry, Ld. Enquiry Officer submitted his findings dated 09-12-2008 to the Employer. He stated that thereafter, the Employer dismissed him from its service vide its order dated 24-12-2008 with immediate effect. He submitted that being aggrieved by the dismissal order dated 24-12-2018, he raised an industrial dispute before the office of the Labour Commissioner, vide his letter dated 29-01-2009 demanding immediate reinstatement with full back wages and continuity in service, which ended in failure.

4. The Workman contended that the Enquiry Officer never considered the objection raised by him and his representative in the said enquiry. He submitted that the Enquiry Officer arbitrarily and mechanically overruled his written objections and totally acted in a biased and prejudicial manner in favour of the Employer. He submitted that the findings given by the Enquiry Officer are non-reasoned findings in a mechanical manner without proper reasoning in favour of the management. He submitted that no charge levelled against him in the charge-sheet dated 27-08-2007 have been proved beyond reasonable doubt. He submitted that the findings given by the Enquiry Officer are perverse and are liable to be set aside and quashed. He submitted that the Enquiry Officer has acted as a mere agent of the management, who made a farce of enquiry and conducted the

enquiry in a flagrant violations of the principles of natural justice and completed the said enquiry with undue haste with biased and prejudicial mind in favour of the management. He submitted that he disputes and challenges the entire enquiry proceedings conducted by the Enquiry Officer in respect of charge-sheet dated 27-08-2007. He submitted that the Enquiry Officer has committed gross error of non-application of mind and in favouring the management by stretching evidence in favour of the management. He submitted that the Enquiry Officer has failed to discuss and analyze the evidence as well as material of the defense and merely stated that the misconduct levelled against him stands proved. He submitted that no reason of whatsoever nature has been given by the Enquiry Officer for not considering the evidence of the defense. He submitted that the witnesses examined by the management are managerial and supervisory staff and as such their testimony cannot be believed. He submitted that none of the workmen or co-worker has been examined by the management as its witness to prove their case. He submitted that the findings given by the Enquiry Officer are not based on evidence on record and that there is no direct evidence against him. He submitted that his dismissal from service smacks of malafides intended to take revenge on him for his legitimate trade union activities and for being an office bearer of the union. He submitted that after termination of his services, the management has recruited new workmen at his factory. He therefore submitted that his dismissal from service is illegal, unjust, bad-in-law and therefore entitled for immediate reinstatement with full back wages and continuity in service.

Without prejudice to his aforesaid contentions, he submitted that the punishment meted out to him of dismissal from service is too harsh and disproportionate considering the nature of allegations leveled against him without admitting that the allegations are proved in the enquiry. He stated that he is presently unemployed and does not have any source of income. The Workman therefore prayed that the action of the Employer in dismissing him from service w.e.f. 24-12-2008 be held as illegal, unjustified and bad-in-law and he be reinstated in service with full back wages, continuity in service and all other consequential benefits thereof.

5. The Employer resisted the claim of the Workman by filing its written statement on 11-10-2010 at Exb.5. The Employer, as and by way of its preliminary objections, submitted that the

dispute raised by the Workman is without merits and as such the reference is liable to be rejected. The Employer submitted that the Goa Trade and Commercial Workers Union on whose representation the purported dispute is referred to this Hon'ble Tribunal has no authority and locus standi to represent the Workman and to espouse the dispute on his behalf.

6. The Employer stated that it is a Company incorporated under the Companies Act, 1956, having its registered office at Pilerne Industrial Estate, Pilerne, Bardez, Goa. The Employer stated that it has a factory, wherein it is engaged in the manufacture of ophthalmic lenses. The Employer stated that it is an export oriented unit in terms of manufacturing license issued to it and it has to carry out its operations in strict compliance with the said manufacturing license.

7. The Employer admitted that the Workman under reference has been employed by them in its factory for manufacturing activities. The Employer stated that on 22-08-2007, the Workman was posted in a section of the factory known as progressive department. The Employer stated that at about 8.14 hours on the said date, the Workman left his workplace in the progressive department without permission of his superiors. The Employer stated that thereafter, he and other three workmen led around 38 workers and barged in the office of its General Manager, Mr. R.A. Prabhu without any permission and gheroed him. The Employer stated that he alongwith other three workmen, Shri Kishore Tuyenkar, Surendra Tuyenkar and Shri Santosh Parab were the leaders of the mob. The Employer stated that he remained in the office of the General Manager for over 15 minutes abandoning the work allotted to him. The Employer stated that the aforesaid acts being serious acts of misconduct, a charge-sheet was served on the Workman detailing the said charges. The Employer stated that the Workman was therefore charged as follows "14 (3) (c): Willful damage to or loss of employers goods or property, 14 (3) (h): Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline". The Employer stated that the Workman was required to show-cause as to why the disciplinary action is not be taken against him for the aforesaid misconducts. The Employer stated that the Workman submitted his reply dated 28-08-2007 to the said charge-sheet. The Employer stated that the explanation given by the Workman by the said reply was not found to be satisfactory.

8. The Employer stated that thereafter a joint domestic enquiry was held into the charge-sheet issued to the Workman and the other three workmen by appointing Shri A. M. Gaikwad. The Employer stated that all the four workmen participated in the enquiry. The Employer stated that during the course of enquiry, Shri Santosh Parab left the services. The Employer stated that the Workman and the other two Workman were represented in the enquiry by an office bearer of the union, Shri Suhas Naik. The Employer stated that their representative cross-examined management witnesses and the Workman also produced his own evidence. The Employer stated that full opportunity was given to the Workman to defend himself and the enquiry was held in compliance with the principles of natural justice and fair play. The Employer stated that on conclusion of the evidence, the Enquiry Officer submitted his findings dated 08-12-2008, wherein he held that the charges "riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline" is proved against the Workman and Shri Kishore Tuyenkar and Shri Surendra Tuyenkar.

9. The Employer stated that by show-cause notice dated 10-12-2008, a copy of the said findings was made available to the Workman and he was required to show-cause as to why the said findings should not be accepted. The Employer stated that by letter dated 16-12-2008, the Workman sought time for four weeks to submit his explanation to the show-cause notice. The Employer stated that by another show cause notice dated 18-12-2008 signed by its director, Shri Gaurav Gupta, they informed the Workman that his request for granting time to submit his reply is rejected and that further informed him that he has accepted the findings of the Enquiry Officer dated 09-12-2008. The Employer stated that by the said show-cause notice, the Workman was informed that Shri Gaurav Gupta has come to the tentative conclusion to award the penalty of dismissal from service to the Workman and he was given an opportunity on the proposed penalty to make his representation on the proposed penalty within four days from the date of receipt of the said notice. The Employer stated that the Workman submitted his reply to the said show cause notice by his letter dated 22-12-2008. The Employer stated that as the said reply was not found to be satisfactory, the Employer dismissed the Workman from service with immediate effect by order dated 24-12-2008.

10. The Employer submitted that the dismissal of the Workman from service is just and legal as the Workman was involved in a very serious misconduct of leading the workers and gheroing its General Manager. The Employer submitted that the principles of natural justice were duly complied with in the enquiry wherein the Workman was represented by an office bearer of a trade union. The Employer submitted that the findings of the Enquiry Officer are based on the evidence and material on record of the enquiry proceedings. The Employer submitted that the said findings are perfectly fair and proper. The Employer submitted that the charges of misconduct proved against the Workman are very grave and serious and such acts deserves the penalty of dismissal from service. The Employer therefore submitted that its action in dismissing the Workman from service is therefore perfectly legal and justified.

Without prejudice to its contention, the Employer submitted that in the event this Hon'ble Tribunal holds for any reason whatsoever that the said enquiry is not fair and proper or the findings of the Enquiry Officer are not legal or not based on evidence on record, they may be given an opportunity to substitute the charges of misconduct alleged against the Workman by producing appropriate evidence in this Hon'ble Tribunal. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the present reference.

11. Thereafter, the Workman filed his rejoinder on 15-04-2011 at Exb.8. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him.

12. Based on the pleadings filed by the respective parties, this court framed the following issues on 11-03-2011 at Exb. 6.

1. Whether the Party-I/Union proves that the enquiry was not fair and proper?
2. Whether the charges levelled against the Workman are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party-I/Union proves that his dismissal from services w.e.f. 24-12-2008 is illegal and unjustified?
4. Whether the Party II proves that the Party I/Union has no locus standi to espouse the dispute?

13. Among the said issues, the issue No. 1 and 2 have been treated as preliminary issues. Both the parties i.e. the Workman as well as the Employer led their evidence respectively and the matter was fixed for order on the findings of the preliminary issue No.1 and 2, after hearing the arguments of both the parties. It is at this stage, Ld. Adv. Shri Suhas Naik, appearing for the Workman as well as Ld. Adv. Shri A. V. Nigalye, appearing for the Employer orally submitted that they are trying to settle the matter amicably, accordingly, Ld. Adv. Shri Suhas Naik, appearing for the Workman as well as Ld. Adv. Shri A. V. Nigalye, appearing for the Employer alongwith the Workman as well as the Manager of the Employer remained present on 18-11-2019 and submitted that the parties have amicably settled the matter and filed terms of consent at Exb. 14 and prayed for passing consent award. The terms of settlement appearing in Exb. 14 are reproduced hereunder:

- a. The Employer/Party II is hereby paying an amount of Rs. 1,25,000/- (Rupees one lakh twenty five thousand only) to the Workman/Party I in full and final settlement of the claim by Party I. The said amount is paid by a demand draft dated 18-11-2019 drawn on Bank of India, Mapuca Branch bearing No. 149705. The Workman/Party I acknowledges the receipt of the same.
- b. The Workman/Party I hereby agrees and declares that all his claims and demands against Party II/Employer are hereby conclusively settled on payment of the aforesaid amounts and he has no further claim or demand of whatsoever nature against the Employer/Party II. Similarly, the Party II/Employer shall have no claim or demand against the Workman/Party I.

I have carefully perused the said terms of settlement at Exb.14 signed by and between the parties hereinabove. The said terms of settlement are beneficial to both the parties. Hence, I consented for the same. Since the dispute under reference is settled between the parties, I hold that the dispute under present reference does not survive.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the management of M/s. GKB Vision Limited, Pilerne Industrial Estate, Pilerne, Bardez-Goa, in dismissing from service its Workman, Shri Vishnu Gawade, with effect from 24-12-2008, is legal and justified?, does not survive.

2. The Workman, Shri Vishnu Gawade, is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2019-LAB/Part-I/819

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 06-11-2019 in Ref. No. IT/106/07 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 10th December, 2019.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/106/07

Ms. Baby Naik and 41 Others,
Rep. by the President,
Goa Trade and Commercial
Workers Union, 2nd Floor,
Velho's Building,
Opp. Municipal Garden,
Panaji-Goa.

... Workmen/Party I

V/s

M/s Sigma Laboratories Ltd.,
6-7-8, Thivim Industrial Estate,
Thivim, Mapusa-Goa.

... Employer/Party II

Workmen/Party I represented by Ld. Adv. Shri Suhaas Naik.

Employer/Party II represented by Ld. Adv. Shri M. S. Bandodkar.

AWARD

(Delivered on this the 6th day of the month of November, of the year 2019)

By Order dated 23-10-2007, bearing No. 28/49/2006-LAB/-1450, the Government of Goa in exercise of powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

“(a) Whether the action of the management of M/s. Sigma Laboratories Limited, Thivim Industrial Estate, Karaswada, Mapusa-Goa, in terminating the services of forty-two workmen mentioned below, with effect from 31-03-2005, is legal and justified?”

Sr. No.	Name of the Workman
1	2
1.	Ms. Baby Naik.
2.	Ms. Kamini Naik.
3.	Ms. Seveirene Dias.
4.	Mr. Ramchandra Churi.
5.	Ms. Elizabeth D'Souza.
6.	Ms. Uidika Parsekar.
7.	Ms. Pratibha Dhargalkar.
8.	Ms. Neelima Kasalkar.
9.	Ms. Pratakta Govekar.
10.	Mr. Gopichand Mahale.
11.	Ms. Ramakant N. Parab.
12.	Mr. Sandeep Redkar.
13.	Mr. Bhushan Mayekar.
14.	Mr. Rajendra Harmalkar.
15.	Ms. Pratibha Parkar.
16.	Ms. Sharad Harmalkar.
17.	Ms. Laurian D. Carrasco.
18.	Ms. Sita Mavlikar.
19.	Ms. Nirmala Desai.
20.	Ms. Sandhya Phadte.
21.	Ms. Shila A. Haldankar.
22.	Ms. Sandhya S.P. Gaonkar.
23.	Ms. Reshma S. Vengurlekar.
24.	Ms. Geetanjali G. Mayekar.
25.	Ms. Pramila R. Gawande.
26.	Mr. Chandrakant A. Salgaonkar.
27.	Ms. Laxmi G. Gaonkar.
28.	Mr. Shrikant B. Gawandi.
29.	Mr. Sharad Salgaonkar.
30.	Ms. Pratibha Parkar.
31.	Ms. Mahalaxmi Shetye.
32.	Ms. Sheela Satelkar.
33.	Ms. Sulochana S. Malik.
34.	Ms. Rekha N. Kerkar.
35.	Ms. Geetali G. Khandekar.

1

2

36. Ms. Prafulla N. Chopdekar.
37. Ms. Siddhi Shetye.
38. Ms. Sangeeta Parab.
39. Mr. Prahlad S. Mandrekar.
40. Ms. Sangeeta M. Toraskar.
41. Ms. Marchelene Simages.
42. Ms. Suvarna Kalvalkar.

(2) If not, to what relief the workmen are entitled?”

2. Upon receipt of the reference, IT/106/07 was registered. Notices were issued to both the parties under registered post, upon which both the parties were served. Party I thereafter filed a Claim statement at Exh. 5 and the Party II filed a Written statement at Exh. 7.

3. In short, the case of the Party I is that the Party II is engaged in manufacturing and supply of pharmaceuticals products having its factory at Thivim Industrial Estate, Thivim. The Party I are 42 permanent workmen employed at the factory engaged in permanent and core operations. The Managing Director of Party II on 31-3-2005 called all the workmen in his cabin in presence of other management staff and informed that they are selling the factory to the other party and that they want clearance of all the workmen before they take over the factory and that all the workmen must resign and in case they do not, their services would be terminated without any compensation. The Managing Director obtained the signatures of all the workmen on the resignation letters under threat, duress and forcibly handed over some amount to them purported to be their final dues. The Party I never voluntarily resigned from the services and had no intention of resigning from their services. The management has also not paid them their correct legal dues. The Party I union raised the dispute before the office of the Labour Commissioner and the Party II came out with a defence that they have signed a Memorandum of settlement dated 31-03-2005. There is however no mention as to under what provision the purported Settlement dated 31-03-2005 had been entered into and whether the workmen had given an authority to the alleged union to sign the purported settlement or whether it is registered or not with the competent authority prescribed under the statute. The purported Settlement dated 31-03-2005 is therefore illegal, unjustified and bad in law and contracting out the statutory provisions of the applicable law.

4. The Party I also claimed that the Party II has blatantly violated Section 25-FFA, 25-FFF and 25-F of the Act and had used pressure tactics and lured some of the workmen by giving them extra benefits to sign the said purported settlement which is totally one sided favouring the management. The present case is an act of unfair labour practice adopted by the employer to get rid of the permanent workmen under the pretext of signing the purported Memorandum of settlement dated 31-03-2005 which is illegal, unjustified, bad in law, unfair, one-sided and totally favouring the management. The Party II after terminating the services of the workmen restarted the manufacturing operations at the place of its establishment at Thivim and at present the factory of the Party II is fully operational with recruitment of new workers in place of Party I workmen. There is no closure of the business activities of the Party II at its factory. It was obligatory on the part of Party II to send intimation letters to Party I workmen asking them to report for work and preference in employment ought to have been given by Party II to the Party I workmen involved in the present reference and hence the said action of the Party II is illegal, unjustified and bad in law. The Party I workmen are therefore entitled for reinstatement with full back wages and continuity in service.

5. In the Written statement, the Party II has claimed that at no point of time the company has terminated the services of 42 workmen concerned in the reference. The said employees have voluntarily resigned from the employment of the company and their resignations cannot be termed as termination. The workmen concerned in the reference after resignation voluntarily accepted all the dues and nothing is payable to them. The Party II signed a valid settlement with the workers after they voluntarily resigned and severed their relationship. The Party I union has no locus standi to represent the workmen concerned in the reference. All the workers have accepted the benefits arising out of settlement signed with the Union. The Party II after paying all the dues to the workmen including ex-gratia closed its activities at the said establishment. Only 42 workmen out of 74 workmen have raised the dispute only after voluntarily resigning and accepting the benefits. The entire reference is bad in law, not maintainable and ought to be rejected in limine. The Party I is therefore not entitled for any relief.

6. In the rejoinder at Exh. 9, the Party I has denied the case set up by the Party II in the written statement.

7. Issues that came to be framed at Exh. 12 are as follows:

- (1) Whether the Party I prove that the Party II obtained their resignation letters of the workmen under threat, duress, force and coercion?
- (2) Whether the Party I prove that the Party II had forced the workmen to accept the money?
- (3) Whether the Party I proves that the settlement dated 31-3-2005 is illegal?
- (4) Whether the Party I proves that the factory is in operation and Party II has employed new workers?
- (5) What relief? What order?

8. In the course of evidence, the Party I examined Shri R. D. Mangueshkar as witness No. 1 and produced on record a copy of unionization letter dated 5-10-2005 sent by union to Party II and AD slip along with a copy of resolution at Exh. 16 colly, a copy of dispute raised by the Party I dated 2-3-2006 at Exh. 17, copies of notices dated 22-5-2006 & 2-5-2006 issued by the Asstt. Labour Commissioner at Exh. 18 colly, a copy of dispute dated 3-6-2006 raised by the Ex-workmen of the Party II at Exh. 19, copies of minutes of proceedings and the failure report at Exh. 20 colly, a copy of letter dated 27-3-2007 addressed by the Union to the Secretary (Labour) at Exh. 21 and a copy of letter dated 23-4-2008 addressed by the union to the Labour Commissioner at Exh. 22. The Party I also examined Smt. Laurian Carrasco as witness No. 2 and produced on record a copy of her appointment letter dated 20-4-1885 issued by Adel Laboratories Pvt. Ltd. at Exh. 28, a copy of her resignation letter along with acceptance of resignation letter dated 31-3-2005 and receipt of payment at Exh. 29 colly, a copy of Service certificate dated 21-4-2005 at Exh. 31, a copy of settlement dated 31-3-2005 along with annexure at Exh. 32 colly. The Party I also examined Shri Govind Sirsat who produced on record a copy of extract of Form 9 at Exh. 53 and a copy of details of Provident Fund remittances by Party II at Exh. 54 colly. and Shri Rajendra Kambli @ Korajkar who produced on record a copy of inspection report dated 2-5-2018 along with statement at Exh. 58 colly and a copy of statement along with details of employees at Exh. 59 colly.

9. On the other hand, the Party II examined Smt. Lourdes D'Souza as witness No. 1 and produced on record a copy of settlement dated 31-3-2005 along with annexures at Exh. 36 colly, a copy of letter

dated 22-10-2005 by Party II to Party I at Exh. 37, a copy of letter dated 12-1-2006 by Party II to ALC, Panaji at Exh. 38, a copy of letter dated 3-11-2005 by Party II to ALC, Mapusa at Exh. 39, a copy of letter dated 9-12-2005 by Party II to ALC, Panaji at Exh. 40, a copy of minutes held before ALC dated 7-6-2006 at Exh. 41, a copy of failure report dated 18-7-2006 at Exh. 42 and the copies of resignation letter, acceptance of resignation letter and final settlement of dues of Ms. Vidhika Parsekar at Exh. 43 colly and closed its case.

10. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II.

11. I have gone through the records of the case and have duly considered the arguments advanced. My answers to the above issues are as follows:

- | | | |
|-------------|-----|---------------------|
| Issue No. 1 | ... | In the Negative. |
| Issue No. 2 | ... | In the Negative. |
| Issue No. 3 | ... | In the Negative. |
| Issue No. 4 | ... | In the Negative. |
| Issue No. 5 | ... | As per final order. |

REASONS

Issue Nos. 1, 2, and 3:

12. Learned Advocate Shri Suhaas Naik for the Party I has submitted that the Managing Director of the Party II called all the workmen in his cabin and informed that they have decided to sell the factory to the other party and all the workmen must resign and go home and that they obtained signatures of all the workmen on the resignation letters under threat and duress and forcibly handed over some amount purported to be their legal dues. The workmen have never voluntarily resigned from the services. The management has not paid the workmen their legal dues including retrenchment compensation, notice pay, gratuity or leave wages. The Settlement dated 31-3-2005 is illegal, unjustified and bad in law which amounts to contracting out the statutory provisions of the law, which states that the agreement is arising out of the closure but in an event, provisions of Section 25-FFA, 25-FFF and 25-F of the Industrial Disputes Act have not been complied with as they adopted unfair labour practice to get rid of permanent workmen under the pretext of signing Memorandum of Settlement dated 31-3-2005 which was one sided and totally favouring the management. The forcible resignations of the workmen amount to the termination of the workmen from the services and therefore the Party I workmen are entitled for the relief claimed and in support thereof, he relied upon the cases of

(i) **Maharashtra General Kamgar Union vs. Glass Containers Pvt. Ltd.**, 1983 ILLJ 326 Bom; (ii) **Industrial Perfumes Ltd. vs. Industrial Perfumes Workers**, (1998) II LLJ 1177 Bom; (iii) **Aroor Carpet Factories, Private vs. K. N. Henry and Ors**, AIR 1964 Ker 162.

13. Per contra, Ld. Adv. Shri M. S. Bandodkar for the Party II has submitted that the reference speaks about the termination of services of 42 workmen from 31-3-2005, although there were 74 workmen. There is no evidence that the services of the workmen have been terminated and in fact it is not the case of the management that the factory has been closed but it has offered VRS scheme to all the workmen which was accepted by them vide Settlement dated 31-3-2005. The documents produced by the company clearly show that it was a case of voluntary retirement and that the service certificates have also been given to all the 74 workmen, including Party I which show the workmen have left of their own accord. The Memorandum of Settlement along with annexure showing the list of workmen clearly indicate that the workmen have received gratuity, leave salary and ex-gratia after they tendered resignations and accepted all the legal dues before arriving at the settlement and in support thereof, he relied upon the cases of (i) **The Chairman/Director, National Bureau of Plants Genetics Resources, New Delhi & Another vs. Shobha M. Dhore & Others**, 2013(5) LLN 164 (Bom.); (ii) **Raijibhai Bhikhabhai Parmar & Ors. vs. Reliance Industries Ltd. (Formerly known as Indian Petrochemicals Corporation Ltd.) & Anr.**, 2016 LLR 673.

14. In fine, the substratum of controversy is whether the Party II terminated the service of the Party I workmen without complying the provisions of the Act or whether the Party I workmen along with other 32 workmen tendered their resignations and accepted voluntary retirement scheme floated by the company and thereby relinquished employer-employee relationship.

15. The Party I have examined Shri R. D. Mangueshkar, General Secretary of Goa Trade and Commercial Workers' Union who has filed affidavit incorporating the statement of claim filed by the Union. In the cross examination, he admitted that the present dispute pertains to alleged illegal termination of the 42 workmen, however he has not produced any termination letters. There is also no dispute that out of 74 workmen, only 42 have raised the dispute on 2-3-2006 when the Settlement dated 31-3-2005 was signed by all the workmen including Party I workmen. The Party I

also examined Shri Rajendra Kambli @ Korajkar, Labour Inspector, Mapusa. He claimed that he carried out inspection of Party II factory on 2-5-2018 and found that there were 107 direct workers and 68 workers employed through 5 contractors. Be that as it may, the case of Party I workmen that it was an illegal closure therefore falls flat.

16. The Party I have also examined, Ms. Laurian Carrasco who has claimed that she was one of the workpersons mentioned in the schedule of reference and that the Managing Director called her and other workers in his cabin and informed that they are selling the company and that they must resign and go home. She also claimed that the Managing Director obtained signature on resignation letter under threat and was forcibly handed over some amount including her unpaid salary. She also stated that her termination is illegal and there is no real closure of the factory and that the factory is in operation. In the cross examination, she admitted that no letter terminating their services was issued to them. She also stated that the company had forcibly signed settlement dated 31-3-2005 with the workers. She also admitted that she did not file any Police complaint or any complaint before the Labour Commissioner. She also admitted that after signing the settlement, she along with other 74 workers received the money out of the said settlement after submitting the resignation letters and was paid 75 days compensation for each completed year. She claimed that a cheque amounting to Rs. 4,64,281/- was received by her and that she never went to the factory after 31-3-2005. She claimed that she did not make any efforts to return the said amount to the company. She also admitted that she obtained service certificate dated 21-4-2005 and that she signed the settlement dated 31-3-2005 at Sr. No. 23 in the annexure to the settlement. She admitted that in the service certificate at Exh. 31, it was written that she was leaving on her own accord, but claimed that it was wrongly written. The above evidence therefore clearly shows that she alongwith Party I workmen have voluntarily tendered their resignations after accepting VRS scheme floated by the company.

17. The Party II examined its Manager, Mrs. Lourdes D'Souza who claimed that the employees have voluntarily resigned from the employment of the company and accepted VRS scheme and all the legal dues after signing a valid Settlement dated 31-3-2005 with the workers thereby severing their relationship. There is therefore no dispute surviving between the workers and the company and that the present dispute has

been raised only after voluntarily resigning and accepting the benefits. She claimed that the undertaking of the Party II was permanently closed as per Settlement dated 31-3-2005. In the cross examination, she stated that the copies of settlement were given to all the authorities which was signed between the company and Sigma Workers Union and that after prolonged discussion between the employees and the Union, VRS scheme was signed with 74 workmen. She denied the suggestion that the Union had no authority to enter into any kind of understanding or settlement with the company on behalf of other workers and that the settlement is not a valid settlement. She also stated that they have calculated and paid to each of the 74 workmen their gratuity amount payable to individual workman and paid the cheques with the details of calculation including gratuity and that 75 days compensation includes gratuity and other benefits.

18. Be that as it may, the Party I have not disputed the Memorandum of settlement at Exh. 32 colly entered into between all the workmen and the management by which VRS scheme was extended to them and accepted by all. A little peep into the Memorandum of Settlement clearly shows that the Union along with the workers and the management after prolonged discussion agreed and entered into the terms of settlement by which all the workers tendered their resignations in writing. The letter of acceptance of resignation and receipt of full and final settlement of dues of one of the workmen, Ms. Vidhika Parsekar at Exh. 43 colly are pointer to that effect. The Party I workmen have received the agreed amount as per the said Memorandum of understanding at the rate of 75 days of amount for each completed years of service who were on the muster roll of the company as on 31-3-2005 including leave encashment of their privilege leave. The Annexure to the Settlement clearly shows that all the workmen have signed the annexure showing details of the calculation of dues, which were paid to them. The service certificate of Ms. Laurian Carrasco at Exh. 31 is also indication of the fact that she alongwith others have left the services on their own accord. None of the above documents including the Settlement and calculation of amount paid have been disputed by Party I workmen, which clearly show that the workmen have been paid gratuity, leave salary and ex-gratia.

19. Needless to mention, the Party I have not challenged the Memorandum of Settlement on the ground that it was bad in law or entered into by misrepresentation or fraud. The settlement has

been signed on 31-3-2005, resignations were also tendered by all the workmen on 31-3-2005 and they were accepted on the same day and the amounts as per settlement were paid. There is nothing produced on record that the Party I workmen including other workmen were not paid as per the settlement. The workmen have also withdrawn the Provident Fund as shown in the Extract of Form-9 and the details of remittances produced by Shri Govind Sirsat at Exh. 53 and 54 colly respectively. He has stated that the workers have given the reason for withdrawing the Provident fund as 'Left' on 31-3-2005. They therefore cannot challenge the settlement once it is admitted by them that they have accepted the VRS scheme. It is well settled that if the workmen want to challenge the VRS compensation received by them by raising an industrial dispute, they will have to deposit the amount received towards VRS as held by the Hon'ble Apex Court in the case of **Raijibhai Bhikhabhai Parmar & Ors.**, supra. The Party I workmen have not deposited the amount of VRS received by them and have challenged the VRS scheme, which is not permissible and therefore, the reference itself is not maintainable.

20. The case of Party I workmen as per the schedule of reference is termination of services with effect from 31-3-2005 on which date the settlement was signed and that they have tendered resignation letters, which were accepted by the management. The only workperson, Laurian examined by the Union failed to justify its case as per statement of claim. The evidence of witness, Shri R. D. Mangueshkar is irrelevant as he is neither attended the conciliation proceedings nor he knows the facts of the case. He is also not the employee of the company. Admittedly, the Memorandum of Settlement was signed on 31-3-2005 and the dispute was raised on 02-03-2006 after a delay of 11 months and no explanation is forthcoming as regards to the said delay. The undisputed documents produced by the management clearly show that the workmen including Party I workmen have accepted the VRS scheme floated by the company along with the dues and have even collected the amount from Provident Fund, wherein it is stated that they have 'left' on their own. There is absolutely no evidence on record that the services of Party I workmen were terminated by Party II or that there is a closure of the establishment by Party II on 31-3-2005. None of the documents produced by Party I indicates that it is a closure. The failure report dated 18-7-2006 at Exh. 20 colly shows that the workmen were disputing VRS scheme but the documents produced by the Party II clearly indicate

that the Party I have accepted VRS scheme by submitting resignation letters and accepting the settlement.

21. Needless to mention, the documents including the Memorandum of settlement with annexure, resignation letter, acceptance letter, receipt and the service certificate clearly show that lumpsum amounts have been paid to all the workmen inclusive of gratuity. The Party I workmen therefore failed to show that the settlement is one sided, bad in law, illegal, unfair, unreasonable and amounts to contracting out the statutory provisions of law and that the management had used pressure tactics and have lured the workmen by giving them extra benefits and that it is an act of unfair labour practice adopted by the employer to get rid of the permanent workmen. Once it is established by the management that the workmen have resigned from the services which was accepted and the amounts have been paid to the workmen without any objection and that till date the resignation have not been withdrawn nor the amount received under VRS scheme is returned, it cannot be said that the settlement is one sided or illegal, more particularly when all the dues including ex-gratia have been paid to the workmen concerned. It is thus clear that the Party II have not terminated the service of the Party I workmen, on the contrary, the Party I workmen along with other 32 workmen have tendered their resignations and accepted voluntary retirement scheme. The submissions and the reliance placed by learned Adv. Shri Suhaas Naik on the above citations turn on their own facts and hence not applicable to the case at hand. It is therefore the Party I have failed to prove that the Party II had obtained their resignation letters under threat, duress, force and coercion and that they were forced to accept the amount or that the Settlement dated 31-3-2005 is illegal. Hence, the above issues Nos. 1, 2 and 3 are answered in the negative.

Issue No. 4:

22. It is the case of the Party I that the factory is in operation and the Party II has employed new workers. Shri R. D. Mangueshkar has not produced on record any list of new employees who have been employed by Party II after the settlement dated 31-3-2005. Be that as it may, Shri Rajendra Kamble has produced on record the report at Exh. 58 colly of Party II company dated 2-5-2018

and found that the factory is in operation alongwith workers. However, as Party I workmen have tendered their resignations after accepting VRS scheme, the above issue becomes redundant. Hence, issue No. 4 is answered in the negative.

23. Pursuant to above discussions and the Party I having failed to prove the issues cast on it, I pass the following:

ORDER

- (i) It is hereby held that the management of M/s. Sigma Laboratories Limited, Thivim Industrial Estate, Karaswada, Mapusa, Goa, have not terminated the services of forty-two workmen mentioned in the reference with effect from 31-03-2005, on the contrary, the Party I workmen along with other workmen have voluntary resigned from services by accepting their dues.
- (ii) The Party I/Workmen are therefore not entitled to any reliefs.
- (iii) No order as to costs.
- (iv) Inform the Government accordingly.

Sd/-
(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Department of Personnel

Order

No. 15/2/2019-PER/3844

Read: 1) Order No. 15/2/2019-PER dated 11-11-2019.

2) Order No. 15/2/2019-PER dated 25-11-2019.

Pursuant to order read in the preamble, the following Officers in the cadre of Block Development Officer (Group "B" Gazetted) under the Government of Goa are hereby deputed for on job training in Directorate of Panchayats for two weeks w.e.f. 16-12-2019 to 27-12-2019.

1. Shri Siddesh Surya Kerkar.
2. Shri Ashwin alias Sadashiv Krishna Dessai.
3. Shri Paritosh Ulhas Fal Dessai.
4. Shri Gurudatta Pandurang Naik (OBC).

After completion of training, they shall report to Personnel Department for further orders.

This issues with the approval of Competent Authority.

Shashank V. Thakur, Under Secretary (Personnel-I).
Porvorim, 20th December, 2019.

Department of Public Health

Order

No. 7/23/87-I/PHD/2809

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/24(1)/2001/238 dated 06-11-2019, Government is pleased to promote the following Junior Anaesthetists to the post of Senior Anaesthetist under the Directorate of Health Services, on regular basis in the Level 11 of Pay Matrix [Rs. 15,600-39,100+Grade Pay Rs. 6,600/- in pre-revised] and other allowances to be fixed as per rules with immediate effect:

1. Dr. Manjiri M. Navelkar alias Parsekar.
2. Dr. Mansi Samir Bhakare.

The promotions are made against the vacancies occurred due to the resignation of Dr. Betty Travasso w.e.f. 01-5-2016 vide order No. 44/18/2006-I/PHD dated 29-4-2016 and due to the retirement of Dr. Pradip Shinkre, on attaining the age of superannuation on 31-8-2019.

Consequent upon their promotion, the postings are as under:

Sr. No.	Name of the doctor	Place of posting
1.	Dr. Manjiri M. Navelkar alias Parsekar	Hospicio Hospital, Margao (She shall draw her salary against the post of Sr. Pathologist).
2.	Dr. Mansi Samir Bhakare	Sub-District Hospital, Ponda.

By order and in the name of the Governor of Goa.

Swati Dalvi, Under Secretary (Health-II).
Porvorim, 18th December, 2019.

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